HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4427 of 2014

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for brevity "the Code"), by the petitioners/Decree Holders is directed against the order dated 19.11.2014 of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad passed in E.A.No.48 of 2014 in E.P.No.112 of 2011 filed by the Decree Holders under Section 151 of the Code requesting to vacate the stay orders and direct the respondent/Judgment Debtor to deposit an amount of Rs.70,52,160/- to be credited to their accounts and pass such other order or orders as the Court deems fit and proper.

2. I have heard the submissions of the learned counsel for the revision petitioners/Decree Holders (for brevity "the DHrs") and the learned Government Pleader appearing for the respondent/Judgment Debtor (for brevity "the JDr"), who is the Land Acquisition Officer, HMDA, Tarnaka. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The DHrs filed the E.P.No.112 of 2011 before the Court below for recovery of a sum of Rs.1,52,30,745/- and sought attachment and sale of movable properties available in the office of the JDr situated at Begumpet, Hyderabad. The JDr is resisting the said EP by filing a counter. Both the parties had filed Calculation Memos. After taking into consideration the Calculation Memos filed by both the sides, the Executing Court determined the amount due and payable by the JDr as Rs.1,52,30,745/- without deducting the income tax deductible at source. Therefore, vide orders dated 05.03.2013, the Court below while allowing the request of the DHrs directed for issuance of warrant of attachment of the EP schedule movables on payment of process. Thus, the Court below found that Rs.1,52,30,745/- is due and payable to the DHrs by the JDr. While so, the JDr filed a petition for review, viz., E.A.No.70 of 2013 in the above EP seeking to review the above said order of the Court below. The DHrs filed a counter and resisted the said application. The Court below by orders dated 17.09.2013 dismissed the review petition. The orders of the Court below determining the amount due and payable by the JDr as Rs.1,52,30,745/- have become final as the JDr did not challenge the said order by filing a revision or other proceeding before a superior Court. Thereafter, the JDr filed a memo dated 13.12.2013 requesting to close the EP *inter alia* alleging that the JDr had already deposited an amount of Rs.1,08,70,658/- (including income tax) to the credit of the respective accounts of the DHrs 2 and 3 and that the 2nd DHr had filed an affidavit on his behalf and on behalf of the 3rd DHr in the capacity of his GPA holder vide GPA no.501 of 2006 and that in that affidavit, he had agreed with the calculations of the JDr and expressed due satisfaction with the calculations of the JDr and had accepted the aforementioned amount which was credited in equal halves to the two respective accounts of the DHrs 2 and 3 and that in spite of receiving the said amount to their satisfaction, the DHrs 2 and 3 are still falsely claiming the amount by wrong calculations and that in view of the said payment and the affidavit of the 2nd DHr, the EP may be closed as the amount was deposited as stated above as per the orders of the Executing Court and the Supreme Court of India. To that memo filed by the JDr, the affidavit filed by the 2nd DHr was enclosed. The JDr also filed EA 200 of 2013 under Section 151 of the Code of Civil Procedure to stay or drop the proceedings of sale of movable properties. The 3rd DHr filed a counter affidavit in the said EA 200 of 2013. Further, the DHrs filed a counter memo dated 16.12.2003 stating their objections to the memo of the JDr and *inter alia* contending that the contents in the memo are absolutely false. The Court below by orders dated 04.03.2014 allowed EA 200 of 2013 and stayed the proceedings in the EP. In the operative portion of the said orders, the Court below observed as follows: ‘Until the said dispute is settled the DHr cannot seek the sale of movable properties. Till the settlement of the said dispute, it is just and necessary to grant the STAY in the main execution petition proceedings. In the result, the petition is allowed and stay is granted in the main EP proceedings.' (Reproduced verbatim). Since EP is stayed, the DHrs filed EA 48 of 2014 for vacating the stay and directing the JDr to deposit an amount of Rs.70,52,160/-. The said petition is resisted by the JDr by filing a counter. The Court below dismissed the said petition, but kept the EP pending without recording any finding as to whether the payment made in a sum of Rs.1,08,70,658/- is made by the JDr and received by the DHrs towards full satisfaction of the decree debt or not. Aggrieved of the said orders in EA 48 of 2014, the DHrs filed the instant revision.

4. The learned counsel for the DHrs while reiterating the chronology of events, which are already stated supra, and while reiterating the grounds urged in the revision and also the case of the DHrs 2 and 3 would submit as follows:

The Court below passed orders accepting the calculations of the DHrs and rejecting the calculation of the JDr and had determined the amount due and payable by the JDr to the DHrs as Rs.1,52,30,745/-. The Court below having dismissed the review petition of the JDr confirmed the earlier orders in regard to the amount due and payable by the JDr to the DHrs. Now, the JDr falsely contends as follows: 'That the JDr had obtained an affidavit, attested on 01.06.2013 by a Notary, from the 2nd DHr and that the said affidavit of the 2nd DHr was given on his behalf and on behalf of the 3rd DHr in the capacity of his GPA Holder and that it is stated in the said affidavit that the JDr had calculated interest amount upto 31.03.2013 and that on such calculation of the JDr, the amount due and payable comes to around Rs.1,08,70,658/- and that the said DHr (deponent of the said affidavit) is satisfied and agreed with the JDr's method of calculation and had accepted the said amount of interest and that therefore, he had made a request to the JDr to deposit the above said amount into his account and the account of his brother M. Ravindra Reddy, the 3rd DHr, equally as per the orders of the Supreme Court of India and that subsequent to that affidavit, which is said to have given by the 2nd DHr, the aforementioned amount was deposited by the JDr into the respective accounts of DHrs Nos.2 and 3 in equal halves and that in view of the said payment, which is accepted by the 2nd DHr, the EP is to be closed.' The DHrs 2 and 3 are disputing the correctness of the contentions of the JDr. The case set up by the JDr is false. Admittedly, only Rs.1,08,70,658/- is paid as mentioned in the invalid affidavit, which was obtained falsely and by mis-representation. The amount as determined by the executing Court is Rs.1,52,30,745/-. No prudent DHr would agree to forego a huge amount and receive a less amount towards full satisfaction. The amount due and still payable to the DHrs 2 and 3 by the JDr is Rs.70,52,160/-. The Court below made far reaching observations in its orders while refusing to vacate stay. The Court below ought to have decided the crux of the issue as to whether the payment of Rs.1,08,70,658/- is towards full satisfaction or not. When the Court below postponed the decision on the said issue and kept the EP pending, the Court below ought not to have made any observations on merits of the matter. The affidavit was said to have been given directly to the JDr outside the Court. The payment of Rs.1,08,70,658/- was also made outside the Court. The payment was not certified under Order XXI Rule 2 of the Code. The affidavit was attested on 01.06.2013 by a Notary public. The affidavit was filed into Court in December, 2013 along with the memo of the JDr. Nowhere in the affidavit it is stated that the amount paid will be received towards full satisfaction of the entire decree debt. There is no mention in the affidavit that the DHrs would file full satisfaction memo into Court in due course. It is only stated in the affidavit that the amount of interest is accepted. When a responsible Government Officer is dealing with the matter, he ought not to have dealt with the matter outside the Court when the EP is pending in a competent Court, that too, without taking any legal opinion before payment. If the payment stated in the affidavit has been made towards full satisfaction, the said fact should have been mentioned in the affidavit or the JDr should have obtained a full satisfaction receipt from the 2nd DHr. The JDr also should have filed the affidavit of the 2nd DHr into Court within the time provided under law. In the circumstances stated by the DHrs and in view of the contents of the affidavit of the 2nd DHr, which is being relied upon by the JDr, it is not possible to accept that the said amount of Rs.1,08,70,658/- is paid towards full satisfaction. Even the Court below did not record a finding to that effect. The DHrs adduced evidence in support of their contentions before the Court below. The JDr did not adduce any evidence. In view of the unrefuted evidence on the side of the DHrs, the orders of the Court below are unsustainable under facts and in law and are liable to be set aside. The Court below ought to have seen that a compromise regarding the obligation under a decree entered into outside the Court is not valid and binding unless such adjustment is recorded or certified by the Court. In the case on hand, such alleged adjustment has not been recorded or certified by the Court. The adjustment is not reported to the Court within a period of thirty days as required under law. A compromise not recorded as required under law cannot be recognized by the Court. The Court below did not advert to the legal position obtaining and passed an erroneous order. The balance amount of Rs.70,52,160/- is still due and payable by the JDr to the DHrs 2 and 3 since the 1st DHr died. The Court below may be directed to take up the EP and answer the vital issue, which was not answered.

4.1 Be it noted that the learned counsel for the DHrs placed reliance on the provisions of Order XXI Rule 1 and also Rule 2, which deals with payment out of Court to DHr.

5. On the other hand, the learned counsel for the JDr while supporting the orders of the Court below and while reiterating the case of the JDr would submit as follows:

The 2nd DHr gave an affidavit to the JDr on his own behalf and on behalf of the 3rd DHr, being his GPA holder. The said affidavit was attested by a Notary public. The 2nd DHr is a GPA Holder of the 3rd DHr. The calculation of the DHrs is not correct. The DHrs are claiming interest on the already paid amounts. The said claim is not in accordance with facts and law. Therefore, the JDr had made a calculation; and, having gone through the calculation memo prepared by him, the deponent of the affidavit i.e., the 2nd DHr had accepted the method of calculation adopted by the JDr and requested for payment of the amount as sanctioned by the JDr by signing the attested Notarised affidavit on his own behalf and on behalf of his brother, the 3rd DHr, he being a GPA Holder of the said DHr. On the satisfaction in regard to the method of calculation adopted by the JDr, the 2nd DHr had requested for release of the said sum and that at his request only, the amount was credited to the respective accounts of DHr Nos.2 and 3 in equal halves and that after such payment of Rs.1,08,70,658/- no further amount is due and, therefore, the keeping of the EP pending by the Court below does not arise. The Court below having dismissed the petition of the DHrs 2 and 3, ought to have closed the EP. The Court below did not record a finding on the vital issue involved in the *lis.* The Court below ought to have held that the payment made is towards full satisfaction and ought to have closed the EP.

6. I have given earnest consideration to the facts and submissions. The undisputed fact is that the Court below, having considered the calculation memos of both the sides, had determined the amount due and payable by the JDr to the DHrs 2 and 3 as Rs.1,52,30,745/- and by its orders dated 05.03.2013 had allowed the request of the DHrs and directed issuance of warrants for attachment of movables of the JDr on payment of process. When the EP is pending, the JDr did not make any payment before the Court as per procedure. Even the payment made outside the Court is not certified by the DHrs. No application is filed by the JDr within the time allowed under law for recording the payment. However, the DHrs are not disputing the part payment. The controversy has arisen on account of the JDr obtaining a notarized affidavit of the 2nd DHr and making payment of Rs.1,08,70,658/- outside the Court, that too, by crediting the said amount in equal halves to the accounts of DHrs 2 and 3 as per the calculation made by the JDr. Why such a mode was adopted by a responsible Government Officer and why a payment of huge amount was made outside the Court could not be explained by the JDr, more particularly, when the calculation of the JDr was not accepted by the Court below and it was held by the Court below that an amount of Rs.1,52,30,745/- which includes income tax is due and payable by the JDr to the DHrs. Had the parties gone before the executing Court without resorting to an outside Court method, the controversy would not have arisen. In this background, it is necessary to refer to the relevant contents of the affidavit of the 2nd DHr, which reads as under:

> **"I and my brother M.Ravinder Reddy are pattadars and owners of land bearing Sy.Nos.720/A, 726, 727 & 728 to an extent of Ac.54-34 guntas, situated at Shamshabad village in Shamshabad Mandal of R.R district. The HUDA (presently named as HMDA) acquired our above mentioned lands for establishment of truck terminal-cum-wholesale market in the year 1990. An award was passed and HMDA paid the award amount. We filed cases before the civil court and thereon honorable High Court and honourable Supreme Court. As per the orders of the hon'ble Supreme Court, HMDA paid enhanced compensation.**
>
> **We have filed EP for payment of interest on solatium and additional market value on par with other awardees. The hon'ble civil Court in EP 112/2011 in OP No.129/1990 ordered for payment of interest on solatium and additional market value. Attachment orders were also passed in the EP.**
>
> **Further, I submit that I am the GPA holder of my brother Sri M.Ravindra Reddy vide registered Doc.No.501 of 2006 (copy enclosed).**
>
> **The LAO, HMDA has calculated interest amount up to March 31, 2013 which comes to around Rs.1,08,70,658/-. I am satisfied and agree with HMDA's method of calculation and accept the amount of interest. I request the LAO, HMDa to deposit the above amount into the accounts of myself and my brother M.Ravindra Reddy equally as per the order of honourable Supreme Court of India.**

S.No.	Name of land owner	Name of Bank/SB account No.	PAN no.
1.	Sri M.Mohan Reddy	SBH Adarshnagar/62020212761	ACIPM1753C
2.	Sri M.Ravindra Reddy	SBH Adarshnagar/52078007136	ADKPM7155K

(Reproduced verbatim)

Keeping in view the legal position applicable to the facts of the case and taking into consideration the contentions of the parties, which are adverted to supra, the Court below is obligated to decide before the EP is terminated, as to whether or not the said payment of Rs.1,08,70,658/- made outside the Court can be taken as payment by the JDr towards full satisfaction or whether or not an amount of Rs.70,52,160/- or any other further amount is still due and payable by the JDr to the DHrs. However, as per the submissions of both the sides, since the Court below did not decide the vital issue involved in the matter and as the EP is pending, this Court is of the considered view that the impugned order can be set aside and the Court below can be directed to address the vital issue and pass appropriate orders in the EP and also in the present execution application. In the well-considered view of this Court, such a course sub-serves the ends of justice.

7. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. The EA 48 of 2014 is remitted to the Court below for consideration and disposal afresh in strict accordance with the procedure established by law. Accordingly, the Court below is directed to now take up the EA 48 of 2014 in the EP as well as the EP and give an opportunity of further hearing to both the sides and address the vital issue as to whether or not the payment of Rs.1,08,70,658/- can be taken as payment by the JDr towards full satisfaction or whether or not an amount of Rs.70,52,160/- or any other further amount is still due and payable by the JDr to the DHRs and then pass appropriate further orders in the EP in strict accordance with the procedure established by law. It is made clear that the observations of the Court below in its earlier orders are set aside and therefore, the Court below shall pass orders as directed supra, without being influenced by any of its observations in its earlier orders. It is needless to say that this Court did not express any opinion in the matter, but had only recorded the contentions of the parties advanced before this Court. No order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

08th June, 2016
MSR

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4427 of 2014

08.06.2016
(Msr)